

# Northumbria Research Link

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## THE CONVERSATION

Academic rigour, journalistic flair



### How legal aid cuts are putting extra strain on family courts

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It has been over three years since the coalition government introduced drastic cuts to legal aid. During that time, much has been written about the impact of those cuts on members of the public attempting to access justice in their family cases.

But there has been another victim of these cuts: the family court system itself. It is currently bulging under pressure from both an increase in applicants who have been forced to represent themselves in family proceedings and also from a rise in applications for injunctions linked to domestic violence.

#### Unrepresented parties

Although the exact numbers of people representing themselves within the court system is difficult to measure, a recent government report has indicated the numbers are on the rise.

Without the assistance of legal representatives, out-of-court discussions can be tricky and most negotiation has to be done within the courtroom, with the assistance of a judge. Even where one party has the assistance of a legal representative, hearings are likely to take much longer than those where both parties have representation.

This appears to be because judges are seeking to ensure fairness between the parties and spend time within the hearing confirming that the unrepresented party fully understands the process and what

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(if anything) they are agreeing to. Guidance on this issue from the **Law Society** indicates that courts may be more willing to grant extensions or adjournments to an unrepresented party.

It was hoped that the introduction of compulsory mediation information and assessment meetings (MIAMs), in 2014 would prevent this by promoting out of court settlements and in turn reducing the number of family court applications.

Yet, research conducted in April 2016 by the National Family Mediation charity indicated that only one in 20 private family court applications are actually preceded by the supposedly “compulsory” MIAM process. New figures show that the number of MIAMs fell by 17% between April and September 2016 and the same period in 2015.

The problem appears to be that, even if one party wishes to follow the full mediation process following the MIAM, the other party must also agree. Without agreement from both parties to the mediation process, the person seeking resolution of their family issue may have no choice but to start legal proceedings without any subsequent advice or assistance.

## **Family courts and evidence of domestic abuse**

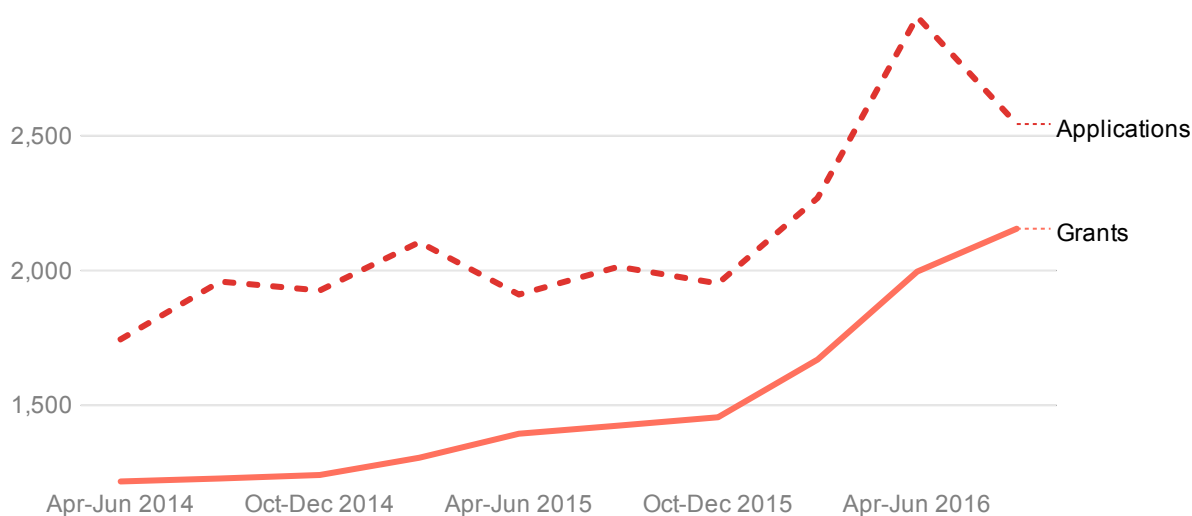
The cuts to public funding have meant legal aid is largely unavailable in family law cases. The exception is where evidence of domestic abuse or violence can be produced. Yet, in many cases where there has been domestic abuse, victims have been reluctant to speak out and the abuse has ultimately gone unreported.

This issue was picked up last year by the charity **Women’s Aid**, who succeeded in bringing a court action to challenge such restrictions on legal aid. This was on the grounds that restrictions on who is eligible for legal aid caused by the level of evidence needed to prove domestic violence had taken place were undermining the actual purpose of legal aid regulations. That purpose is to ensure that victims of domestic abuse are not materially disadvantaged from having to face their abuser in court.

This resulted in a government review of the regulations. Since April 2016, the Legal Aid Agency now accepts evidence of domestic abuse within the last five years in support of a legal aid application, compared to the previous time-frame of two years. Looking at statistical data, this does appear to have helped more people access funding. Newly released figures show a 26% increase in applications for legal aid supported by evidence of domestic violence between July and September 2016 and the same period in 2015, and a 51% increase in grants.

## Grants up for legal aid due to evidence of domestic violence

Applications and certificates granted (decision-based timing) for civil representation in private family law supported by evidence of domestic abuse



Source: [Ministry of Justice](#) [Get the data](#)

However, despite these changes, the underlying problem remains that, except for family law injunctions, some evidence of domestic abuse must still be provided before legal aid is approved. This has led to concerns that people could be forced to use the family courts to obtain the necessary evidence of domestic abuse they require for their legal aid applications in other family court proceedings – such as those to gain access to their children.

For example, a man or a woman could first make an application for a non-molestation order (a type of injunction) against their ex-partner and subsequently use that order as required evidence of domestic violence in a custody hearing. Legal aid remains available for non-molestation applications without any need for prior evidence of domestic abuse.

The standard of proof or evidence required by the family courts in support of these applications is much lower than that required in criminal proceedings. It is therefore much more likely that an application of this type will be successful, even if the available evidence of the abuse is limited. Quite often these applications will be based solely on one person's version of events compared to another's.

### Family courts under strain

Data gathered by a series of freedom of information requests in 2015 showed a general increase in applications for non-molestation orders since the legal aid changes were brought in, although admittedly in some areas of England more than others. On top of this, there has been a 14% increase in other private family law cases in the last year alone. All this means that the list of those waiting for hearings in family courts are increasingly busy.

At the same time, those people who could have previously sourced legal aid due to their low income will usually be entitled to either a full waiver or a reduction in their court fee. Since 2014, fees are also

no longer payable in applications for non-molestation orders. This means that the courts are not even receiving a contribution towards their running costs in these cases, and are running on empty.

By cutting legal aid, the government has seemingly only succeeded in passing the burden from one publicly funded agency, the Legal Aid Agency, to another, HM Courts and Tribunals Service. The family court system is currently at breaking point and further government review is urgently needed if people are going to be able to continue to use the system effectively.

[Domestic violence](#)[family law](#)[Legal aid](#)[UK justice](#)[UK courts](#)[UK law](#)